

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6974 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be
1 allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the
3 fair copy of the judgment ?

4 Whether this case involves a substantial
4 question of law as to the interpretation of
the constitution of India, 1950 or any
order made thereunder ?

5 Whether it is to be circulated to the
5 civil judge ?

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KIRTIKANT A SHAH - Petitioner(s)
Versus
DINESHCHANDRA RATILAL SHAH - Respondent(s)

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Appearance :

MR PC MASTER for Petitioner No(s).: 1.

MR DS VASAVADA for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 13/07/2005

ORAL JUDGMENT

1.0 The petitioner herein has challenged the order dated

08.06.1999 passed by the Appellate Authority, whereby the appeal was dismissed on the ground that it was filed beyond the period of limitation.

2.0 The respondent herein was working with the petitioner establishment. It is the case of the petitioner that the respondent had himself resigned from the petitioner Company and even though the provisions of the Payment of Gratuity Act were not applicable to the petitioner Company since the petitioner was employing less than ten employees, as a mark of goodwill, the respondent was paid Rs.18,000/- out of which Rs.5,000/- was deducted towards his loan and Rs.13,000/- was paid towards Gratuity.

2.1 It is the further case of the petitioner that after six months of receiving the aforesaid amount, the respondent filed an application before the Competent Authority stating that he has not been paid Gratuity by the petitioner Company, thereby claiming an amount of Rs.24,600/- towards the same with interest. Ultimately, the Competent Authority passed an order directing the petitioner to pay an amount of Rs.16,421/- to the respondent towards Gratuity.

2.2 Being aggrieved by the said order, the petitioner

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filed Review Application No.11 of 1996 for quashing and setting aside the earlier order of the Competent Authority. The Competent Authority rejected the Review Application of the petitioner and confirmed its earlier order.

2.3 Pursuant to the above, the petitioner filed Restoration Application in Review Application No.11 of 1996. The said Restoration Application was also dismissed by the Competent Authority. The petitioner again filed another Review Application praying that the earlier orders of the Competent Authority be quashed and set aside.

2.4 The Competent Authority dismissed the said Review Application on the ground that in Review Application, no further Review Application can be filed and only Appeal can be filed. Thereafter, the petitioner preferred an Appeal before the Appellate Authority.

2.5 The Appellate Authority by impugned order rejected the said appeal stating that the appeal was filed beyond the period of limitation. Hence, this petition.

3.0 Mr. PC Master learned advocate for the petitioner has contended that the petitioner has preferred the Appeal in question within the prescribed time-limit. He has submitted

that along with the Appeal Memo, Challan was also submitted showing that an amount of Rs.16,421/- was deposited for preferring an appeal and that the Competent Authority had also signed the said Challan. He has submitted that the Competent Authority was well aware about the preferring of an appeal against its order and about the amount which was deposited on 17.05.1999 by way of a cheque. Mr. Master has, therefore, submitted that the impugned order of the Competent Authority is illegal and erroneous and deserves to be quashed and set aside.

4.0 I have heard learned counsel for the parties and perused the documents placed on record. The Competent Authority has rejected the Appeal of the petitioner on the ground that the appeal was not preferred within the prescribed period of limitation and that Challan for depositing the requisite amount was also not produced on the record of the Appeal Memo. From the document placed at Annexure-P to the petition, it is very clear that an amount of Rs.16,421/- was deposited by the respondent on 17.05.1999 for preferring an appeal against the earlier order of the Competent Authority. The said Appeal was also preferred within the prescribed time-limit, i.e within 60 days from the order of the Competent Authority.

4.1 Moreover, the Competent Authority has also signed the Challan and in the Challan itself it has been clearly stated that for preferring an Appeal an amount of Rs.16,421/- has been deposited by the respondent. Hence, it is clear that the Appellate Authority has not taken any trouble to look into the facts of the case nor has applied its mind and has mechanically passed the impugned order without entertaining the Appeal on merits. Keeping in mind the principle laid down in the case of Collector, Land Acquisition, Anantnag v. Mst. Katiji reported in A.I.R. 1987 S.C., pg.1353, the Appellate Authority ought to have entertained the appeal on merits instead of dismissing the same on the ground of delay. Hence, I am of the opinion that the impugned order of the Appellate Authority is illegal and perverse and deserves to be quashed and set aside.

5.0 For the foregoing reasons, this petition is allowed. The impugned order of the Competent Authority dated 08.06.1999 is quashed and set aside. The Appellate Authority is directed to hear the appeal on merits and to dispose of the same as expeditiously as possible and preferably within a period of three months from the receipt of writ of this order. Rule is made absolute accordingly

with no order as to costs.

(K. S. JHAVERI, J.)

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